

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the matter of

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1998 Biennial Regulatory Review —
Review of International Common Carrier
Regulations

IB Docket No. 98-118

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REPLY OF PANAMSAT CORPORATION

PanAmSat Corporation ("PanAmSat"), by its attorneys, hereby submits this reply to the comments of WorldCom, Inc. (WorldCom") and Comsat Corporation ("Comsat") regarding the above-referenced Notice of Proposed Rulemaking ("NPRM").

DISCUSSION

WorldCom suggests in its comments that the Commission should use the exclusion list approach, rather than case-by-case Section 214 review, for services provided by non-U.S. licensed satellites.¹ Comsat, for its part, suggests that the Commission include Intelsat satellites among the facilities covered by blanket Section 214 authorizations.² PanAmSat opposes these suggestions.

1. **The Use of Non-U.S.-Licensed Satellites Should Continue To Be Governed By The Policies Adopted Last Year In DISCO II.**

Following a year-and-a-half inquiry, which included review and consideration of virtually every aspect of the international satellite market, the Commission issued the DISCO II order in which it established new rules and policies for evaluating market entry by non-U.S.-licensed satellites.³ Now, on an extremely sparse record, and in a proceeding regarding general Section 214 streamlining, WorldCom suggests that the Commission cast aside the DISCO II rules and policies. The Commission should reject this suggestion.

As noted in the comments of the Federal Bureau of Investigation ("FBI"), the Commission's tentative conclusion to retain its DISCO II analysis of applications to use non-U.S.-licensed satellites is based on sound policy considerations. Given the

¹ Comments of WorldCom at 7.

² Comments of Comsat at 3-4.

³ See Amendment of the Commission's Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Service in the United States, 12 FCC Rcd 24094 (1997).

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weightiness of those considerations and the careful balancing done by the Commission in DISCO II, the FBI concluded "that non-U.S.-licensed satellite systems remain a matter of sensitivity requiring ongoing Section 214 prior review and authorization, and that such systems therefore are not proper subject matter for the Commission's current NPRM 'regulatory relief' endeavor."⁴

PanAmSat agrees. Applications to use a non-U.S.-licensed satellite system raise numerous policy issues, which should be vetted by the FCC and other responsible executive branch agencies under the procedures adopted in DISCO II. This NPRM is not a referendum on DISCO II, and it should not be used to revisit the rules and policies adopted therein.

2. The Commission Should Continue To Review Any Proposed Uses Of Intelsat Satellites Under The DISCO II Framework.

In DISCO II, the Commission declined to allow satellites operated by Intelsat free access to the U.S. market because of "unique competitive concerns relevant to entry by IGOs and IGO affiliates."⁵ Instead, the Commission concluded that it would engage in a substantive review of applications to "provide international services via Intelsat or Inmarsat on a case-by-case basis."⁶ Thus, Intelsat facilities may not be used to provide service in the United States until the FCC has had a chance to review the implications of such service, including whether the service will be used on a "competitive" or non-competitive route, and whether it is a service in which Comsat remains dominant, *e.g.*, occasional-use video.

Nonetheless, Comsat suggests that, because Comsat has been reclassified as "non-dominant" for some routes and services, it should be able to use all Intelsat facilities and services on a blanket basis.⁷ In doing so, Comsat has glossed over the fact that blanket authority would allow Comsat to use any given Intelsat facility for a

⁴ Comments of the FBI at 14 (emphasis original).

⁵ DISCO II, 12 FCC Rcd at 24140.

⁶ Id. at 24149-50.

⁷ Ironically, when PanAmSat argued in the context of the Comsat non-dominance proceeding that the Commission should look to Intelsat's market power, rather than Comsat's, Comsat and its economic consultants objected on the ground that Comsat competes independently of Intelsat. Comsat Corporation, File No. 60-SAT-ISP-97, Opposition of Comsat at 13-14; See also File No. 60-SAT-ISP-97, Comsat Responses to Henry Goldberg's Comments (Comsat has access to only "about 15% of the total capacity of Intelsat's 24 satellites"). Virtually every other Comsat pleading and economic study in the docket repeats, in one form or another, the theme that Intelsat's market power should not be attributed to Comsat. Now, however, Comsat invites the Commission to regard Comsat and Intelsat as interchangeable for purposes of applying its new Section 214 policy and rules.

multitude of services and routes, including non-competitive services and services on "thin" routes. Indeed, even the determination as to whether a market that a facility serves is competitive depends on the type of service being provided.

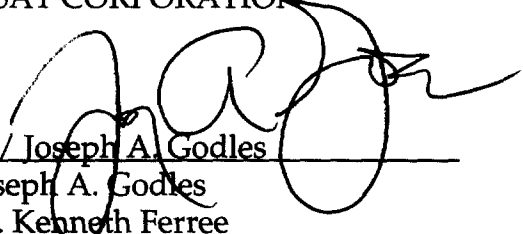
Under these circumstances, Comsat's suggestion should be rejected. Consistent with the DISCO II policies, the Commission must have information regarding the type of service proposed and the route on which the service will be provided before it can make a meaningful decision regarding the competitive implications of that service. Blanket authority is fundamentally inconsistent with the case-by-case determinations that the Commission must make in these circumstances. The Commission should, therefore, reiterate that global Section 214 authority does not encompass all Intelsat facilities, but only those facilities and services that the Commission has specifically approved.

CONCLUSION

For the foregoing reasons, the Commission should reject the suggestions of WorldCom and Comsat that it use this NPRM to revisit the policies and rules adopted in DISCO II.

Respectfully submitted,

PANAMSAT CORPORATION

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